

## HAPPILY UN-MARRIED – LIVING TOGETHER AND LOVING IT

Sonal Datta\*

### Introduction:

Live in Relationships in India are often seen as a taboo and a sin. Marriage is necessarily the basis of social foundation from which important legal rights and obligations emerge. In ancient times marriage was considered to be decided by the God, and divinity was associated with it. It is a sacred social institution. Marriage according to Hindu law is a holy union for the performance of religious duties. It is not a contract but is a sanskar or sacrament.<sup>1</sup> A relationship of a man with a woman in legal parlance is legitimate if it is based on proper marriage and illegitimate if not as per marriage laws.<sup>2</sup> The law and society were traditionally biased in favour of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Currently, in India, marriage as a lifelong social bond is being questioned. There is a rising tendency to enter into "live-in-relationship" instead of marriage which leads to conjugal disloyalty and disquiet.<sup>3</sup>

Some of the legal moves have brought adult heterosexual non-marital cohabitation patterns, popularly termed as "live-in-relations" into public focus in India. These legal moves do not unambiguously signify legal sanction and recognition to new forms of non-marital heterosexual cohabitation patterns in India as some popular and judicial readings seem to suggest.<sup>4</sup> India is a country which is slowly

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\* **Research Scholar, Panjab University, Chandigarh and Advocate, Punjab and Haryana High Court, Chandigarh.**

<sup>1</sup> Atul Desai, *Principles of Hindu Law* 9 (Lexis Nexi Butterworths, New Delhi, 2007)

<sup>2</sup> Nivedita Ghosh, *The Emerging Marital Trends in Indian Scenario*, available at: [www.research-chronicle.com](http://www.research-chronicle.com) (Visited on June 11, 2016)

<sup>3</sup> Sunderlal Desai, *Principal of Hindu Law* 16 (State Mutual Book Service, New Delhi, 6<sup>th</sup> Edn., 1990)

<sup>4</sup> Catherine Soanes, *Live Together without being Married* 15 (Oxford University Press, U.K., 7<sup>th</sup> Edn., 2007)

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opening its doors to western ideas and lifestyles. The basic idea of conducting a live in relationship is that the interested couple wants to test their compatibility for each other before going for some commitment. It may also be that couples in live-in-relationships see no benefit or value offered by the institution of marriage or that their financial situation prevents them from being married on account of marriage expenses. Whatever the reason, it is quite clear that in a traditional society, where the institution of marriage is considered to be a "sacred", an increasing number of couples choose a live-in-relationship, sometimes even as a permanent arrangement, over marriage.<sup>5</sup>

There is no specific enactment for live-in-relationship. Neither any personal law recognizes live-in-relationship nor does the Criminal Procedure Code, 1973. The Protection of Women from Domestic Violence Act, 2005 on the other hand for the purpose of providing protection and maintenance to women refers to an aggrieved person from "relationship in nature of marriage" only. As there is no legal definition of the term live-in-relationship, therefore law on this issue is not very clear. It is difficult to fit the concept of live-in-relationship within personal laws governing the institution of marriage and legitimacy of children. Live-in relationships in India have still not received the consent of the majority of people. The people consider it as immoral and an improper relationship which is opposed to the sanctity of marriage.<sup>6</sup>

### **Analysis of Legal Status of Live in Relationship**

The traditional Indian society however has disapproved of such living arrangement for several reasons. First, society revered the institution of marriage. Secondly, if a woman was financially dependent on the man, the instability of such a relationship created a subservient status for the woman. Till recently and even now in small towns and

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<sup>5</sup> Anuja Aggarwal, "Law and Live-in-Relationship in India" 47 *Economic and Political Weekly* 50 (2012)

<sup>6</sup> Rajendra Anbhule, "Aggrieved Women and Live-in Relationship :Judicial Discourse" *Bharti Law Review* 67 (2013)

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cities, there is much social criticism and stigma attached to such live-in-relationships, forcing them to remain largely secretive.<sup>7</sup>

Live-in-Relationship has been one of the most controversial legal topic. There is no legislative provision in India recognizing live-in-relationship except the provision given under the Protection of Women from Domestic Violence Act, 2005. Before that the issue was that, where a man and woman living together for a long time even without a valid marriage as per personal law, the woman was entitled to claim relief against her male partner.

The Privy Council for the first time laid down the preposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage.<sup>8</sup>

The Privy Council resorted to the same principle and made significant addition to the ruling of 1927 and opined that law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years. For a live-in couple to be considered validly married, the court wanted evidence of cohabitation for a number of years, without specifying the minimum number of years.<sup>9</sup>

From the above two historic judgements of the Privy Council, an attempt can be made to define the term "Live-in-Relationship." The whole notion of live in relationship is not as simple as it appears, but is multi-dimensional bringing along with it many issues and complications. The definition and ambit of live-in-relationship is not clear. But still it can be opined that "Live-in-Relationship" is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. In every day parlance, it is

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<sup>7</sup> Live in Relationships and its Impact on Marriage in India, *available at* : <http://westminsterlawreview/articles/> ( Visited on June 11,2016)

<sup>8</sup> *A.Dinohamy v. W.L. Blahamy*, AIR 1927 PC 135

<sup>9</sup> *Mohabhat Ali Khan v. Muhammad Ibrahim and others*, AIR 1929 PC 185

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cohabitation, as couples present themselves as spouse to the world.<sup>10</sup> Also referred to as consensual union or de facto marriage, it refers to unmarried heterosexual couples living together in an intimate relationship. Such a relationship is also known as "common law marriage" or "Sui Juris" marriage (of ones own laws), informal marriage or marriage by habit and repute.<sup>11</sup>

After 1950, the Supreme Court of India, though followed the principle laid down by the Privy Council in the above referred two judgements but added further that the fact of presumption of marriage due to continuous cohabitation of a man and woman as husband and wife, is rebuttable, and if there are circumstances which weaken or destroy that presumption, the court cannot ignore them.<sup>12</sup>

The Honourable Supreme Court further reiterated that though the presumption of being married for about fifty years was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon a bastard.<sup>13</sup>

Thus, in those cases where a man lived with a woman for a long time without formal proof of marriage, the woman has been accorded legal status with a view to protect her rights. It is clear that act of marriage can be presumed from the common course of natural events and the conduct of the parties as they are borne out by the fact of a particular case. The view taken by the Privy Council in 1927 and 1929 has been consistently followed by the Honorable Supreme Court after 1950 granting a woman status of wife and favouring legitimacy of marriage.<sup>14</sup>

Before 2000, no courts in the country ever uttered the word "Live-in-Relationship", but not thereafter. In 2001, the bench consisting of

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<sup>10</sup> *Supra* note 5 at 17

<sup>11</sup> Swarupa N. Dholam, Socio-legal dimensions of live-in-relationship in India, *available at* : [www.mja.gov.in](http://www.mja.gov.in) (Visited on June 11,2016)

<sup>12</sup> *Supra* Note 6 at 70

<sup>13</sup> *Goka Chand v. Parvin Kumari*, AIR 1952 SC 231

<sup>14</sup> *Badri Prasad v. Dy. Director of Consolidation*, AIR 1978 SC 1557

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Honourable Justice M. Katju and Justice R.B. Mishra observed that a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society; but is not illegal. There is a difference between Law and Morality.<sup>15</sup>

On 28 April, 2010, Special Bench of the Supreme Court of India consisting of Justice K.G.Balakrishnan, Justice Deepak Verma and Justice B.S. Chauhan, propounded that there is no law which prohibits Live-in-Relationship or pre-marital sex, which happens due to cultural exchange between people and is thus permissible. The court also held that living together is a part of the Right to Life under Article 20 of the Constitution of India and is not a criminal offence.<sup>16</sup>

Thus, live-in-relationship is like a walk in and walk out relationship. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of other party. There are no legal strings attached to the relationship. Today's India is changing at a pace that was socially unimaginable. Issues like live-in-relationship that were taken up by the western society are gradually percolating into our social norms. Marriage is just another commitment. If people are shying away from marriages-one reason could be that people are scared of commitments that grow from marriage and are worried about the same. Thus, law should have a discernible stance with respect to live in relationships and the aftermath of such relations. Therefore, the Honorable Supreme Court on 21<sup>st</sup> October, 2010 cleared all doubts about the same.

The Honourable Supreme Court consisting of Justice M. Katju and Justice T.S. Thakur, examined the definition of “aggrieved person” and “domestic relationship” and observed that the expression "Relationship in the nature of Marriage" which is included within the definition of "domestic relationship" has not been clearly defined. Therefore, the Supreme Court held that "Relationship in nature of marriage” is akin to a Common Law Marriage and should fulfill the following requirements:

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<sup>15</sup> *Payal Sharma v. Superintendent, Nari Niketan, Agra*, AIR 2001 ALL 254

<sup>16</sup> *Khusboo v. Kanniammal and Another*, AIR 2010 SC 3196

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- 1) The couple must hold themselves out to society as being akin to spouses.
- 2) They must be of legal age to marry.
- 3) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- 4) They must have voluntarily cohabited.

The judgement notes by way of illustration that "merely spending weekends" together, "a one night stand", would not qualify for protection under the Protection of Women from Domestic Violence Act, 2005.<sup>17</sup>

### **Maintenance of Children of Un-Married Couples**

Section 125 of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents, who cannot maintain themselves. As of now maintenance can only be claimed by a woman who is a wife, has either been divorced or has obtained a divorce, or is legally separated and it not remarried.<sup>18</sup>

However, recently it was observed that it is divorced wife who is treated as a wife in context of section 125 of Cr.P.C. and if a person has not even been married i.e. the case of live-in-partners, they cannot be divorced, and hence cannot claim under the Cr.P.C. Thus, the Malimath Committee recommended that the word "wife" in section 125 Cr.P.C. should be amended to include a woman who was living with the man like his wife for a reasonably long period. The basic aim was to give the woman a legal status as that given to a wife.<sup>19</sup> Ironically even after the amendment in 2003, the Honourable Supreme Court in *Savitaben Bhatiya v. State of Guajrat*<sup>20</sup> observed that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope

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<sup>17</sup> *Velusamy v. D. Patchaiamnna*, AIR 2011 SC 479

<sup>18</sup> *Supra* note 11 at 13.

<sup>19</sup> Malimath Committee, Report : *Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, 2003)

<sup>20</sup> (2005) 3 SCC 636

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to include a woman not lawfully married within the expression of "wife". The bench held that this inadequacy in law can be amended by the legislature. From the above it is clear that there was a divergence of opinion on the interpretation of the word "wife" in section 125 of Code of Criminal Procedure, 1973.

Finally in *Chanmuniya v. Virendra Kushwaha*<sup>21</sup> it was held that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and a woman have been living together as husband and wife for a reasonably long period, and a strict proof of marriage should not be a precondition for maintenance under section 125 of Code of Criminal Procedure.

### **Live-in-Relationships : A Boon or Bane**

Act of Live-in-Relationship is understood to be without mutual statutory obligations towards each other. The biggest drawback of a Live-in-Relationship is the social stigma in Indian society. This form of relationship is yet not acceptable in India as there is no social responsibility, the partners are free. He/she may misuse this fact and may constantly change partners. Most of the times, living relationships are against the family. By the time the family accepts, the couple may lose interest in each other.<sup>22</sup>

It threatens the notion of husband and wife and the cognition of marriage that enjoys high level of sanctity. As there are no social obligations to fulfill, the position of wife is disadvantageous in such situation. While the right of legally wedded wife remains at stake, the right of live-in female partner too does not become secure.<sup>23</sup>

The children born under such relationships, although are recognized under Hindu Marriage Act, 1955, however it is submitted that the couples who tend to disobey the socially recognized social tenor cannot be supposed to be people of only one religion or to be the one

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<sup>21</sup> (2011) 1 SCC 141

<sup>22</sup> Legalizing live-in-relationship : Caution needed, available at : <http://www.merineews.com/article.html> (Visited on June 20, 2016)

<sup>23</sup> Securing Live-in-Relationship, available at : <http://www.indiatogether.org.htm> (Visited on June 20, 2016)

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professing Hinduism. In fact, many a time, because of family's opposition to inter-religion and inter-racial marriage, couple prefers to get into live-in-relationship and hence forth circumventing family objections. Such relationships are fragile and can be dissolved any moment as there is no bondage and obligation.<sup>24</sup>

Though the Court in India have recognized persons in "long-term" live-in-relationship to be as good as a married spouse, such decision while being delivered were for upholding the rights of the "other" woman but these decisions contradict the law on bigamy. When bigamy is illegal, it is not clear as to how then a live-in-relationship can be equal to marriage. Personal laws differ for various communities on different matters and to fit in live-ins into each of these aspects would be difficult and complex exercise.<sup>25</sup>

As an impact of globalization, families are broken up and life partners are bound to stay alone in different countries of the world away from their life partners. Due to this societal change, live-in-relationships have multiplied, earth shattering the very institution of marriage. Thus, due to the above cons live-in-relationships should be discouraged as they contradict with various legal right of a woman/wife which she is entitled to as per Hindu Marriage Act, 1955. Protection of the basic rights of women by guaranteeing her legal rights is one of the basic human right of women. Any deviation from this would amount to violation of basic human right of women/wife.<sup>26</sup>

## **Conclusion**

The basic drawback of Live-in-Relationship is the social stigma attached to it due to our traditional set up. Country like India is not ready to accept such a form of relationship, where majority of people have their own conservative customs and traditions. Emergence of live-in-relationship seems to pose a challenge to the solid rock on which institution of marriage has been built up and nurtured.

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<sup>24</sup> *Supra* note 11 at 9

<sup>25</sup> *Supra* note 7 at 11

<sup>26</sup> Live-in-relationships in India : Legal Status, available at : <http://www.gangothri.org/articles> (Visited on June 20, 2016)

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Though the debate rages on in public forum with recommendations and opinions yet coming in from various authorities and commissions to either amend the existing laws or desist from doing so, there have been no amendments. Thus this concept needs the immediate attention of the lawmakers to make it clear through suitable legislation otherwise different couples may be subjected to different yardsticks when they seek their rights. After all, live-in-relationships are based on informal commitments which has no social thumbnail attached to it, which is against our social fabric.<sup>27</sup>

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<sup>27</sup> *Supra* note 7

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